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September 5

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CONCORD, N.H.

Lawton B. Chandler, Secretary,
State Tax Commission
Concord, New Hampshire

Dear Mr. Chandler:

Under date of August 28, 1951 you advised that the City of Laconia has recently adopted an ordinance under the terms of which the next fiscal year of the City would end on April 26, 1952 and in following years on June 30th. Heretofore its fiscal year has ended on February 15th of each year. In changing over to the new fiscal year the imposition of taxes to cover expenses of government for a longer period than twelve months will be necessitated. You inquire if your Commission can legally approve a tax rate designed to raise funds for such longer period. I answer in the affirmative.

This matter requires a consideration whether the City has the authority to change its fiscal year. No specific provision appears in the Laconia charter which would authorize the City Council to determine its fiscal year period. However, while "the power must of course be found in the legislative enactment /i/ need not . . . be delegated in express words . . . It is sufficient if it be 'necessarily or fairly implied in or incident to the powers expressly granted' or 'essential to the accomplishment of the declared objects and purposes,' as set forth in the enactment." Bowler v. Nagel, 228 Mich. 434, 37 A.L.R. 1154, and see City Commission v. Hirschman, 253 Mich. 596, 599 (1939). In this case the necessary implication is found in the language of Revised Laws, chapter 62, section 3:

"City Councils. The administration of all the fiscal, prudential and municipal affairs of any city, and the government thereof, shall be vested in one principal officer called mayor, a board of aldermen, and a common council, and the said mayor and aldermen and common council, in their joint capacity, shall be called the city councils."

While the matter is not entirely free from doubt, we find that the City Council in Laconia has by ordinance established its fiscal

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year over a period of fifty years. Such long-standing precedent is not to be lightly disregarded and we feel is supported by the view of the law above expressed, which we believe to be the better view. Having concluded that the City Council has the authority therefore to change its fiscal year, it follows that the budget must be changed accordingly and in this instance the ordinary twelve-month period is so extended as to require a tax levy consistent with the budget period.

It is our conclusion that so long as the City complies with the provisions of the law regarding the levying of taxes you may approve its tax rate under the authority conferred on you by Revised Laws, chapter 82, even though such rate reflects a budgetary period in excess of twelve months.

Very truly yours,

Gordon M. Tiffany
Attorney General

GMT:d